

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TEXARKANA DIVISION

HOWARD MACK §
v. § CIVIL ACTION NO. 5:15-cv-202
JASON SMITH, ET AL. §

MEMORANDUM ADOPTING REPORT AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE
AND ENTERING FINAL JUDGMENT

The Plaintiff Howard Mack, a prisoner of the Texas Department of Criminal Justice, Correctional Institutions Division proceeding *pro se*, filed this civil rights lawsuit under 42 U.S.C. §1983 complaining of alleged violations of his constitutional rights. This Court ordered that the case be referred to the Magistrate Judge pursuant to 28 U.S.C. §636(b)(1) and (3) and the Amended Order for the Adoption of Local Rules for the Assignment of Duties to United States Magistrate Judges. As Defendants, Mack named: Lt. Jason Smith; Lt. Tony Rust; Sgt. Steven Coleman; Officer Alan Parker; Officer Lashon Bishop; and former Warden Dawn Merchant, all of whom are officials at the Telford Unit of TDCJ-CID.

According to Mack, Lt. Smith used excessive force on him while Officers Rust, Coleman, Parker, and Bishop stood by and did not intervene. Docket No. 1 at 3. He further claimed Warden Merchant did not properly investigate his grievance and implemented policies under which unconstitutional practices occurred. *Id.* at 4.

The Defendants filed a motion for summary judgment arguing Plaintiff's allegations did not rise to the level of an Eighth Amendment violation and asserting their entitlement to qualified and Eleventh Amendment immunity. Docket No. 35. Plaintiff filed two motions for extension of time in which to respond to the motion for summary judgment (Docket Nos. 39, 46), which were granted (Docket Nos. 41, 48), but he filed no response.

After review of the pleadings, the Magistrate Judge issued a Report recommending the motion for summary judgment be granted and the lawsuit dismissed with prejudice as to Plaintiff's federal law claims, but without prejudice as to Plaintiff's state law claims. Docket No. 52. The Magistrate Judge also recommended the statute of limitations be suspended for 30 days on Plaintiff's state law claims in accordance with 28 U.S.C. §1367(d). *Id.* at 10.

Plaintiff received a copy of the Report on January 30, 2018, but has filed no objections; accordingly, he is barred from *de novo* review by the District Judge of those findings, conclusions, and recommendations and, except upon grounds of plain error, from appellate review of the unobjected-to factual findings and legal conclusions accepted and adopted by the District Court. *Douglass v. United Services Automobile Association*, 79 F.3d 1415, 1430 (5th Cir. 1996) (*en banc*).

The Court has reviewed the pleadings in this cause and the Report of the Magistrate Judge. Upon such review, the Court has determined that the Report of the Magistrate Judge is correct. The pleadings and the competent summary judgment evidence in this case, viewed in the light most favorable to the Plaintiff, show there are no genuine disputes of material fact. Defendants are entitled to judgment as a matter of law. It is accordingly

ORDERED the Report of the Magistrate Judge (Docket No. 52) is **ADOPTED** as the opinion of the District Court. It is further

ORDERED the Defendants' motion for summary judgment (Docket No. 35) is **GRANTED**. It is further

ORDERED the above-styled action is **DISMISSED WITH PREJUDICE** as to Plaintiff's federal law claims and **DISMISSED WITHOUT PREJUDICE** as to the Plaintiff's state-law claims. It is further

ORDERED the statute of limitations on Plaintiff's state law claims is **SUSPENDED** for a period of 30 days following the date of entry of final judgment. 28 U.S.C. §1367(d). Finally, it is

ORDERED any and all motions which may be pending in this civil action are hereby
DENIED.

So ORDERED and SIGNED this 9th day of March, 2018.

Robert W. Schroeder III
ROBERT W. SCHROEDER III
UNITED STATES DISTRICT JUDGE